

Opponent

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Retired FWP game
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STATE FISH AND GAME
BILL NO. 4
DATE March 19
BILL NO. HB 19

HOUSE BILL #190

This proposed legislation is destined for the Montana Supreme Court. The wording is so ambiguous that it leaves the door open for litigation beyond what we might all imagine.

January 14, 2009 bill:

In two places this bill states that it is void or invalid if changed, it has been changed or amended. It says the same thing in the most current copy.

Testimony states that there are a small number of landowners that are causing the access problems.

It takes two to tangle, there are also a small number of proponents of this bill that are also unreasonable and inconsiderate.

I am concerned with two aspects of this proposed bill: If this bill passes, it has the potential to close that private property that is open to those people that work with landowners to gain access for hunting and fishing.

This happened when state land sections were opened to access without listening to landowner concerns. You can have the state sections but the deeded ground will be closed and it was closed.

Secondly, I am concerned with any involvement and costs to the 56 county commissions, 56 county attorneys and the 56 county sheriffs. How many of you have visited with your county representatives? I visited with mine and they want nothing to do with this bill or the Mt FWP.

I made it clear to my county commissioners that I would be very unsupportive and mad should any of my county tax dollars be used for this legislation in the form of labor or materials or assistance.

FWP is noted for having a whipping boy to blame bad things on. This bill is no exception, FWP can point a finger at 56 county commissions, 56 county attorneys and 56 county sheriffs when problems hit the fan.

This legislation needs to be severely amended or killed in it's present form.

This bill states highway bridges and county bridges. If highway bridges wording is used the door is open to include Federal Highway Bridges, State Highway Bridges, county road bridges, city road bridges and private road bridges.

After the 2007 legislative session it was common to see "recreationalists" entering public waters from Federal and State bridges. This put an undue burden on the landowners, the trespassers used this crutch as a means to access and did not care if it was legal or not. The proposed legislation must state county road bridges.

I think that the proponents of this bill should be required to post each and every bridge in the state of Montana so that the public knows where it can access from a bridge and where they can't.

There are places in Montana where the impact will be such that access will have to be restricted in the name of the resource. I can visualize some areas where certain bridge areas could become a biological desert due to over use. I also think that the proponents should be required to put up sign-in boxes at each bridge so that if there are problems those involved could be located faster if they were required to sign in.

There must be set backs as to where users can park vehicles and possibly trailers. Access must be guaranteed for normal travel by trucks, swathers, combines, etc.

The proposed legislation refers to fishing and also recreational purposes. The wording must be specific to sport fishing only. Recreational purposes is too broad and ambiguous. I would see the proponents of this bill using the broad language to expand their definition as they saw fit.

In 1995 the Montana Supreme Court issued an opinion called State of Montana vs Bullock. This decision severely restricted law enforcement officers from entering private property without probable cause or a search warrant.

Would HB 190 allow FWP to enter private property and go on fishing expeditions for violations or landowner harassment?

You say this would not happen, it already has happened. In a signed statement I quote, "On April 4th, 2008 Warden sergeant Coy Kline and myself went down to the Coy Brown bridge to fish and see if we would be contacted by anyone while we were fishing".

In the early fall of 2008, I had an opportunity to visit with two employees at a fly shop in Ennis. I questioned them about fishing the Ruby river in Madison county. They were very helpful in explaining how to access the Ruby river at different bridges in the county and even drew me a map for the different locations. They explained that if I was confronted by a landowner just contact a game warden and the landowner would be taken care of. From their comments it was evident that the game wardens in Ennis and Sheridan were in the hip pockets of at least one fly shop and many of the recreationalists that use the Ruby river. Where is objectivity and fairness with respect to the landowners and private property rights?

At every bridge in the state of Montana there is a possibility there could be four different landowners bordering the bridge, two on each bank of the river upstream and two on each side of the river downstream.

Would the proponents of this bill require all four of the landowners to provide access? If not, how would they decide who to pick on? Flip a coin, how would they decide.

In Section 3, paragraph 2b it states, "If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options".

This sentence makes FWP judge, jury and executioner, I respectfully question their legal authority here.

I don't own property that bounds a river and a bridge, but if I did and saw FWP removing my fence, there would be action taken and not a whole lot of conversation would be involved. This wording does everything to alienate everyone involved and widen the gap of hard feelings even further.

Again as I stated in the beginning the proposed legislation states that if it is removed or altered it is void and invalid, please kill this bill.

In closing I want to thank you for this opportunity to testify and give my personal interpretation of the proposed legislation. I would ask that you consider one final option to this legislation if you have decided that you will pass this legislation in some form. Please put some kind of a sunset rule on the bill where the legislation is only good for two years and brought up in 2011 for review. Appoint an interim committee from the House, Senate, proponents and opponents to monitor the legislation. Make FWP document all activities related to the bill and bring forth a report of the good and bad to the legislature in 2011.

Thank you,
Ron Carlson